

Executive Summary – Enforcement Matter – Case No. 49807
SOUTHWESTERN HOLDINGS, INC.
RN101214336
Docket No. 2014-1846-PWS-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Three or more enforcement actions (NOVs, orders, etc.) over the prior five year period for the same violation(s).

Media:

PWS

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Cibolo Creek Ranch, located 32 miles south of Marfa, two miles west of Highway 67,
Presidio County

Type of Operation:

Public water system

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: May 15, 2015

Comments Received: No

Penalty Information

Total Penalty Assessed: \$607

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$607

Total Due to General Revenue: \$0

Payment Plan: N/A

Supplemental Environmental Project ("SEP") Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - N/A

Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

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Docket No. 2014-1846-PWS-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: November 17, 2014 through December 5, 2014

Date(s) of NOE(s): December 5, 2014

Violation Information

1. Failed to comply with the maximum contaminant level ("MCL") for total coliform and failed to timely post public notification and submit a copy of the public notification to the Executive Director regarding the failure to comply with the maximum contaminant level ("MCL") for total coliform [30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2)(B) and (f), and TEX. HEALTH & SAFETY CODE § 341.031(a)].
2. Failed to post public notification and submit a copy of the public notification to the Executive Director regarding the failure to conduct routine coliform monitoring [30 TEX. ADMIN. CODE § 290.122(c)(2)(A) and (f)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

By November 21, 2014, the Respondent posted public notification and submitted a copy of the public notification to the Executive Director regarding the failure to comply with the MCL for total coliform for the month of October 2014.

Technical Requirements:

The Order will require the Respondent to:

- a. Within 30 days:
 - i. Begin complying with applicable coliform monitoring requirements by providing water that meets the provisions regarding microbial contaminants. The provision will be satisfied upon six consecutive months of compliant monitoring and reporting; and
 - ii. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to persons served by the Facility, including but not limited to providing public notification regarding the failure to conduct routine coliform monitoring and the failure to comply with the MCL for total coliform.
- b. Within 45 days, submit written certification to demonstrate compliance with Ordering Provision a.ii.
- c. Within 225 days, submit written certification to demonstrate compliance with Ordering Provision a.i.

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Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Austin Henck, Enforcement Division,
Enforcement Team 3, MC 169, (512) 239-6155; Candy Garrett, Enforcement Division,
MC 219, (512) 239-1456
TCEQ SEP Coordinator: N/A
Respondent: John B. Poindexter, President, SOUTHWESTERN HOLDINGS, INC.,
600 Travis Street, Suite 200, Houston, Texas 77002-3009
David R. Nuzzo, Vice President, SOUTHWESTERN HOLDINGS, INC., 600 Travis
Street, Suite 200, Houston, Texas 77002-3009
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	8-Dec-2014	Screening	11-Dec-2014	EPA Due	31-Mar-2015
	PCW	29-Jan-2015				

RESPONDENT/FACILITY INFORMATION

Respondent	SOUTHWESTERN HOLDINGS, INC.
Reg. Ent. Ref. No.	RN101214336
Facility/Site Region	6-El Paso
Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	49807	No. of Violations	2
Docket No.	2014-1846-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Gregory Zychowski
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$350**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **42.0%** Enhancement **Subtotals 2, 3, & 7** **\$147**

Notes

Enhancement for three NOV's with the same/similar violations, one NOV with dissimilar violations, and one agreed order without a denial of liability.

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$0**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts **\$114**
Estimated Cost of Compliance **\$210**

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$497**

OTHER FACTORS AS JUSTICE MAY REQUIRE **22.1%** **Adjustment** **\$110**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Enhancement to capture the avoided costs of compliance for Violation Nos. 1 and 2.

Final Penalty Amount **\$607**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$607**

DEFERRAL **0.0%** Reduction **Adjustment** **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$607**

Screening Date 11-Dec-2014

Docket No. 2014-1846-PWS-E

PCW

Respondent SOUTHWESTERN HOLDINGS, INC.

Policy Revision 4 (April 2014)

Case ID No. 49807

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101214336

Media [Statute] Public Water Supply

Enf. Coordinator Gregory Zychowski

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	3	15%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 42%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for three NOVs with the same/similar violations, one NOV with dissimilar violations, and one agreed order without a denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 42%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 42%

Screening Date 11-Dec-2014

Docket No. 2014-1846-PWS-E

PCW

Respondent SOUTHWESTERN HOLDINGS, INC.

Policy Revision 4 (April 2014)

Case ID No. 49807

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101214336

Media [Statute] Public Water Supply

Enf. Coordinator Gregory Zychowski

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(f)(3) and 290.122(b)(2)(B) and (f), and Tex. Health & Safety Code § 341.031(a)

Violation Description

Failed to comply with the maximum contaminant level ("MCL") for total coliform during the months of October 2014 and November 2014 and failed to timely post public notification and submit a copy of the public notification to the Executive Director regarding the failure to comply with the MCL for total coliform for the month of October 2014. Specifically, the Respondent was required to post public notification for the October 2014 exceedance by November 12, 2014.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 15.0%

>> Programmatic Matrix

	Major	Moderate	Minor
Falsification			

Percent 0.0%

Matrix Notes

As a result of the exceedance, persons served by the Facility have been exposed to significant amounts of contaminants which do not exceed levels that are protective of human health.

Adjustment \$850

\$150

Violation Events

Number of Violation Events 2

61 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$300

Two monthly events are recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$300

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$108

Violation Final Penalty Total \$520

This violation Final Assessed Penalty (adjusted for limits) \$520

Economic Benefit Worksheet

Respondent SOUTHWESTERN HOLDINGS, INC.
Case ID No. 49807
Reg. Ent. Reference No. RN101214336
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs EB Amount
Item Description No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$100	17-Nov-2014	30-Jun-2015	0.62	\$3	n/a	\$3
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$5	13-Nov-2014	21-Nov-2014	0.02	\$0	n/a	\$0

Notes for DELAYED costs

The training/sampling delayed cost includes the estimated amount to implement procedures to ensure that all necessary public notifications are provided in a timely manner to persons served by the Facility, including but not limited to providing public notification regarding the failure to conduct routine coliform monitoring and the failure to comply with the MCL for total coliform, calculated from the date of the record review to the estimated date of compliance.

The other delayed cost includes the estimated amount to provide public notification (\$5 per notification), calculated from the date the public notification was required to the compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	1-Oct-2014	30-Nov-2014	1.08	\$5	\$100	\$105
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated amount for additional sampling and oversight to identify the source of contamination, calculated for the months in which the exceedance occurred.

Approx. Cost of Compliance \$205 TOTAL \$108

Screening Date 11-Dec-2014

Docket No. 2014-1846-PWS-E

PCW

Respondent SOUTHWESTERN HOLDINGS, INC.

Policy Revision 4 (April 2014)

Case ID No. 49807

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101214336

Media [Statute] Public Water Supply

Enf. Coordinator Gregory Zychowski

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 290.122(c)(2)(A) and (F)

Violation Description

Failed to post public notification and submit a copy of the public notification to the Executive Director regarding the failure to conduct routine coliform monitoring for the month of February 2014.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$950

\$50

Violation Events

Number of Violation Events 1

92 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$50

One single event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$50

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$87

This violation Final Assessed Penalty (adjusted for limits) \$87

Economic Benefit Worksheet

Respondent SOUTHWESTERN HOLDINGS, INC.

Case ID No. 49807

Reg. Ent. Reference No. RN101214336

Media Public Water Supply

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs EB Amount
Item Description No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost is captured in the Economic Benefit Worksheet for Violation No. 1.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$5	1-Mar-2014	31-May-2014	1.17	\$0	\$5	\$5
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated amount to provide the public notification (\$5 per notification), calculated for the period when the public notification was required.

Approx. Cost of Compliance

\$5

TOTAL

\$5

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To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



TCEQ Compliance History Report

PUBLISHED Compliance History Report for CN600656987, RN101214336, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN600656987, SOUTHWESTERN HOLDINGS, INC. **Classification:** NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN101214336, CIBOLO CREEK RANCH **Classification:** NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 14 - Other

Location: 32 miles south of Marfa, two miles west of Highway 67, in Presidio County, Texas

TCEQ Region: REGION 06 - EL PASO

ID Number(s):

PUBLIC WATER SYSTEM/SUPPLY REGISTRATION
1890015

Compliance History Period: September 01, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014

Date Compliance History Report Prepared: January 20, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: January 20, 2010 to January 20, 2015

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Greg Zychowski

Phone: (512) 239-3158

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If **YES** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

- 1 Effective Date: 12/15/2012 ADMINORDER 2012-0469-PWS-E (Findings Order-Agreed Order Without Denial)
Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)
Description: TCR Increase Monitoring Violation 03/2011 - Failure to collect any of the 5 distribution samples following a coliform found month.
Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: Mar 2011 TCR PN Increase Monitoring Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code § 290.122 during the time period that public notice was required for failing to conduct coliform monitoring for the month of 03/2011.
Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
5A THSC Chapter 341, SubChapter A 341.033(d)
Description: TCR Routine Monitoring Violation 04/2011 - Failure to collect any routine monitoring sample(s).
Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)

Description: Apr 2011 TCR PN Routine Monitoring Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code § 290.122

during the time period that public notice was required for failing to conduct coliform monitoring for the month of 04/2011.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)

5A THSC Chapter 341, SubChapter A 341.033(d)

Description: TCR Routine Monitoring Violation 06/2011 - Failure to collect any routine monitoring sample(s).

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)

Description: Jun/2011 TCR PN Routine Monitoring Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code § 290.122 during the time period that public notice was required for failing to conduct coliform monitoring for the month of 06/2011.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)

5A THSC Chapter 341, SubChapter A 341.033(d)

Description: TCR Routine Monitoring Violation 08/2011 - Failure to collect any routine monitoring sample(s).

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)

5A THSC Chapter 341, SubChapter A 341.033(d)

Description: TCR Routine Monitoring Violation 09/2011 - Failure to collect any routine monitoring sample(s).

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)

Description: Aug 2011 TCR PN Routine Monitoring Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code § 290.122 during the time period that public notice was required for failing to conduct coliform monitoring for the month of 08/2011.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)

Description: Sep 2011 TCR PN Routine Monitoring Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code § 290.122 during the time period that public notice was required for failing to conduct coliform monitoring for the month of 09/2011.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)

5A THSC Chapter 341, SubChapter A 341.033(d)

Description: TCR Routine Monitoring Violation 10/2011 - Failure to collect any routine monitoring sample(s).

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)

5A THSC Chapter 341, SubChapter A 341.033(d)

Description: TCR Routine Monitoring Violation 11/2011 - Failure to collect any routine monitoring sample(s).

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)

5A THSC Chapter 341, SubChapter A 341.033(d)

Description: TCR Routine Monitoring Violation 12/2011 - Failure to collect any routine monitoring sample(s).

Classification: Minor

Citation: 2A TWC Chapter 5, SubChapter A 5.702

30 TAC Chapter 290, SubChapter E 290.51(b)

Description: During a record review conducted on February 24, 2012, TCEQ staff documented that the Respondent did not pay all annual Public Health Service ("PHS") fees, for fiscal year of 2012, including any associated late fees and penalties, for TCEQ Financial Administration Account No. 91890015.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

- | | | |
|---|--|---|
| 1 | Date: 06/18/2014 (1210192) | CN600656987 |
| | Self Report? NO | Classification: Moderate |
| | Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A) | |
| | | 30 TAC Chapter 290, SubChapter F 290.122(f) |
| | Description: FEB/2014 TCR Routine MR PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct routine coliform monitoring for the month of 02/2014. | |
| 2 | Date: 08/08/2014 (1178082) | CN600656987 |
| | Self Report? NO | Classification: Minor |
| | Citation: 30 TAC Chapter 290, SubChapter D 290.41(a) | |
| | Description: Failure to ensure that openings to the atmosphere are covered with 16- mesh (or finer) to preclude the possible entrance of contaminants. At the time of the investigation, the openings at the well head were not screened. | |
| | Self Report? NO | Classification: Minor |
| | Citation: 30 TAC Chapter 290, SubChapter D 290.43(a) | |
| | Description: Failure to ensure that fence is kept in good repair. At the time of the investigation, the fence around the ground storage tank had several areas in need of minor repair. | |
| 3 | Date: 10/14/2014 (1210192) | CN600656987 |
| | Self Report? NO | Classification: Moderate |
| | Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3) | |
| | Description: TCR MCL Violation 10/2014 - System exceeded a maximum contaminant level. | |
| 4 | Date: 11/07/2014 (1210192) | CN600656987 |
| | Self Report? NO | Classification: Moderate |
| | Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3) | |
| | Description: TCR MCL Violation 11/2014 - System exceeded a maximum contaminant level. | |

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

Component Appendices

Appendix A

All NOVs Issued During Component Period 1/20/2010 and 1/20/2015

1	Date:	02/16/2011	(891730)	CN600656987	Classification:	Minor
	Self Report?	NO	For Informational Purposes Only			
	Citation:	30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O)				
	Description:	Failure to provide the well site with an intruder-resistant fence. The fence is not six feet in height and does not have three strands of barbed wire extending outward from the top of the fence at a 45 degree angle around the entire fence.				
				Classification:	Moderate	
	Self Report?	NO	For Informational Purposes Only			
	Citation:	30 TAC Chapter 290, SubChapter D 290.42(b)(6)				
	Description:	Failure to provide the well with a proper sampling tap for treated water.				
				Classification:	Moderate	
	Self Report?	NO	For Informational Purposes Only			
	Citation:	30 TAC Chapter 290, SubChapter D 290.43(d)(2)				
	Description:	Failure to provide all three (3) pressure tanks with a pressure release device and a functioning pressure gauge.				
				Classification:	Moderate	
	Self Report?	NO	For Informational Purposes Only			
	Citation:	30 TAC Chapter 290, SubChapter D 290.46(d)(2)(A)				
	Description:	Failure to maintain a minimum disinfection residual of 0.2 mg/L (free chlorine) throughout the distribution system at all times. The chlorine residual at the water spigot located outside of the laundry room was 0.01 mg/L.				
				Classification:	Moderate	
	Self Report?	NO	For Informational Purposes Only			
	Citation:	30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(i)(III)				
	Description:	Failure to maintain a record of the amount of chemical used each week.				
				Classification:	Moderate	
	Self Report?	NO	For Informational Purposes Only			
	Citation:	30 TAC Chapter 290, SubChapter D 290.46(l)				
	Description:	Failure to maintain a record of the flushing of dead-end mains at monthly intervals.				
				Classification:	Minor	
	Self Report?	NO	For Informational Purposes Only			
	Citation:	30 TAC Chapter 290, SubChapter D 290.46(m)(1)				
	Description:	Failure to conduct and maintain a record of the annual tank inspections on all three (3) pressure tanks for 2010.				
				Classification:	Moderate	
	Self Report?	NO	For Informational Purposes Only			
	Citation:	30 TAC Chapter 290, SubChapter D 290.46(s)(2)(C)(i)				
	Description:	Failure to maintain a record of the accuracy of the manual disinfectant residual analyzer using chlorine solutions of known concentrations.				
				Classification:	Minor	
	Self Report?	NO	For Informational Purposes Only			
	Citation:	30 TAC Chapter 290, SubChapter F 290.110(e)(4)(B)				
	Description:	Failure to maintain a record of the Disinfection Level Quarterly Operating Reports for the period beginning October of 2010 and ending December of 2010.				
2	Date:	04/29/2011	(981317)	CN600656987	Classification:	Moderate
	Self Report?	NO	For Informational Purposes Only			
	Citation:	30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)				
	Description:	TCR Increase Monitoring Violation 03/2011 - Failure to collect any of the 5 distribution samples following a coliform found month.				

3	Date:	06/03/2011	(981405)	CN600656987	Classification:	Moderate				
	Self Report?	NO	For Informational Purposes Only							
	Citation:	30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i) 5A THSC Chapter 341, SubChapter A 341.033(d)								
	Description:	TCR Routine Monitoring Violation 04/2011 - Failure to collect any routine monitoring sample(s).								
4	Date:	08/26/2011	(981417)	CN600656987	Classification:	Moderate				
	Self Report?	NO	For Informational Purposes Only							
	Citation:	30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i) 5A THSC Chapter 341, SubChapter A 341.033(d)								
	Description:	TCR Routine Monitoring Violation 06/2011 - Failure to collect any routine monitoring sample(s).								
5	Date:	08/29/2011	(981317)	CN600656987	Classification:	Moderate				
	Self Report?	NO	For Informational Purposes Only							
	Citation:	30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)								
	Description:	Mar 2011 TCR PN Increase Monitoring Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code § 290.122 during the time period that public notice was required for failing to conduct coliform monitoring for the month of 03/2011.								
6	Date:	10/05/2011	(981405)	CN600656987	Classification:	Moderate				
	Self Report?	NO	For Informational Purposes Only							
	Citation:	30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)								
	Description:	Apr 2011 TCR PN Routine Monitoring Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code § 290.122 during the time period that public notice was required for failing to conduct coliform monitoring for the month of 04/2011.								
7	Date:	10/07/2011	(981441)	CN600656987	Classification:	Moderate				
	Self Report?	NO	For Informational Purposes Only							
	Citation:	30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i) 5A THSC Chapter 341, SubChapter A 341.033(d)								
	Description:	TCR Routine Monitoring Violation 08/2011 - Failure to collect any routine monitoring sample(s).								
8	Date:	11/08/2011	(981417)	CN600656987	Classification:	Moderate				
	Self Report?	NO	For Informational Purposes Only							
	Citation:	30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)								
	Description:	Jun/2011 TCR PN Routine Monitoring Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code § 290.122 during the time period that public notice was required for failing to conduct coliform monitoring for the month of 06/2011.								
9	Date:	11/17/2011	(981447)	CN600656987	Classification:	Moderate				
	Self Report?	NO	For Informational Purposes Only							
	Citation:	30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i) 5A THSC Chapter 341, SubChapter A 341.033(d)								
	Description:	TCR Routine Monitoring Violation 09/2011 - Failure to collect any routine monitoring sample(s).								

Date: 06/18/2014 (1210192) CN600656987
Classification: Moderate

Self Report?	NO	For Informational Purposes Only
Citation:	30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A) 30 TAC Chapter 290, SubChapter F 290.122(f)	
Description:	FEB/2014 TCR Routine MR PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct routine coliform monitoring for the month of 02/2014.	

Date: 08/08/2014 (1178082) CN600656987
Classification: Minor

Self Report? NO For Informational Purposes Only

Citation: 30 TAC Chapter 290, SubChapter D 290.41(a)

Description: Failure to ensure that openings to the atmosphere are covered with 16- mesh (or finer) to preclude the possible entrance of contaminants. At the time of the investigation, the openings at the well head were not screened.

Classification: Minor

Self Report?	NO	For Informational Purposes Only
Citation:	30 TAC Chapter 290, SubChapter D 290.43(a)	
Description:	Failure to ensure that fence is kept in good repair. At the time of the investigation, the fence around the ground storage tank had several areas in need of minor repair.	

Date: 10/14/2014 (1210192) CN600656987
Classification: Moderate

Self Report? NO For Informational Purposes Only

Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3)

Description: TCR MCL Violation 10/2014 - System exceeded a maximum contaminant level.

Date: 11/07/2014 (1210192) CN600656987
Classification: Moderate

Self Report? NO For Informational Purposes Only

Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3)

Description: TCR MCL Violation 11/2014 - System exceeded a maximum contaminant level.

* NOV's applicable for the Compliance History rating period 9/1/2009 to 8/31/2014

Appendix B

All Investigations Conducted During Component Period January 20, 2010 and January 20, 2015

Item 1	February 15, 2011**	(891730) For Informational Purposes Only
Item 2	April 05, 2011**	(907156) For Informational Purposes Only
Item 3	January 18, 2012**	(981317) For Informational Purposes Only
Item 4	January 19, 2012**	(981405) For Informational Purposes Only
Item 5	January 27, 2012**	(981574) For Informational Purposes Only
Item 6	August 05, 2014**	(1178082) For Informational Purposes Only
Item 7	November 12, 2014	(1203197) For Informational Purposes Only
Item 8	December 03, 2014	(1210192) For Informational Purposes Only
Item 9	December 05, 2014	(1211432) For Informational Purposes Only

* No violations documented during this investigation

**Investigation applicable for the Compliance History Rating period between 09/01/2009 and 08/31/2014.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
SOUTHWESTERN HOLDINGS, INC.
RN101214336**

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§

**BEFORE THE

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2014-1846-PWS-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding SOUTHWESTERN HOLDINGS, INC. (the "Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a public water system located 32 miles south of Marfa, two miles west of Highway 67, in Presidio County, Texas (the "Facility") that has

approximately 22 service connections and serves at least 25 people per day for at least 60 days per year.

2. During a record review conducted from November 17 2014 through December 5, 2014, TCEQ staff documented that the Respondent did not comply with the maximum contaminant level ("MCL") for total coliform during the months of October 2014 and November 2014 and did not timely post public notification and submit a copy of the public notification to the Executive Director regarding the failure to comply with the MCL for total coliform for the month of October 2014. Specifically, the Respondent was required to post public notification and submit a copy of the public notification to the Executive Director for the October 2014 total coliform exceedance by November 12, 2014.
3. During a record review conducted from November 17, 2014 through December 5, 2014, TCEQ staff documented that the Respondent did not post public notification and submit a copy of the public notification to the Executive Director regarding the failure to conduct routine coliform monitoring for the month of February 2014.
4. The Respondent received notice of the violations on December 11, 2014.
5. The Executive Director acknowledges that by November 21, 2014, the Respondent posted public notification and submitted a copy of the public notification to the Executive Director regarding the failure to comply with the MCL for total coliform for the month of October 2014.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 2, the Respondent failed to comply with the maximum contaminant level for total coliform and failed to timely post public notification and submit a copy of the public notification to the Executive Director regarding the failure to comply with the MCL for total coliform, in violation of 30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2)(B) and (f), and TEX. HEALTH & SAFETY CODE § 341.031(a).
3. As evidenced by Findings of Fact No. 3, the Respondent failed to post public notification and submit a copy of the public notification to the Executive Director regarding the failure to conduct routine coliform monitoring, in violation of 30 TEX. ADMIN. CODE § 290.122(c)(2)(A) and (f).
4. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

5. An administrative penalty in the amount of Six Hundred Seven Dollars (\$607) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). The Respondent has paid the Six Hundred Seven Dollar (\$607) administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Six Hundred Seven Dollars (\$607) as set forth in Section II, Paragraph 5 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: SOUTHWESTERN HOLDINGS, INC., Docket No. 2014-1846-PWS-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order,
 - i. Begin complying with applicable coliform monitoring requirements by providing water that meets the provisions regarding microbial contaminants, in accordance with 30 TEX. ADMIN. CODE § 290.109. The provision will be satisfied upon six consecutive months of compliant monitoring and reporting; and
 - ii. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to persons served by the Facility, including but not limited to providing public notification regarding the failure to conduct routine coliform monitoring and the failure to comply with the MCL for total coliform, in accordance with 30 TEX. ADMIN. CODE § 290.122.
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision No. 2.c below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.ii.

- c. Within 225 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.i. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Public Drinking Water Section Manager
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

6. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Pamela Mancini
For the Executive Director

9/11/15
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Southwestern Holdings, Inc. I am authorized to agree to the attached Agreed Order on behalf of Southwestern Holdings, Inc., and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Southwestern Holdings, Inc. waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Signature

David R. Nuzzo
Name (Printed or typed)
Authorized Representative of
SOUTHWESTERN HOLDINGS, INC.

Date

April 14, 2015

Title

Vice President

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section III, Paragraph 1 of this Agreed Order.